

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

R&S GROCERY AND MARKET, LLC
Plaintiff,

V.

ATAIN SPECIALTY INSURANCE CO.
Defendant.

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Civil Action No. 6:17-cv-00058

NOTICE OF REMOVAL

TO THE HONORABLE COURT:

COMES NOW Defendant, Atain Specialty Insurance Co., and files its Notice of Removal, and would respectfully show unto the Court as follows:

PROCEDURAL HISTORY

1. Plaintiff filed suit in Cause No. 17-09-81511-C, in the 267th Judicial District Court of Victoria County, Texas on or about September 5, 2017. Defendant Atain Specialty Insurance Co. received the certified mail of the service on September 11, 2017, and timely filed an answer on September 29, 2017. Plaintiff's Original Petition seeks monetary relief of over \$200,000 but not more than \$1,000,000.

2. Defendant has filed this Notice of Removal within the time period required by 28 U.S.C. § 1446(b).

NATURE OF THE SUIT

3. Plaintiff alleges that on or about January 8, 2016, it sustained damages as a result of an incident that occurred in Victoria County, Texas. Specifically, an above ground gas storage tank ruptured causing gasoline to escape. The leaked gasoline caused damage to the

tank, the berm, and surrounding property. Plaintiff sued Defendant for recovery of insurance proceeds for the damage from an insurance policy issued by Defendant to Plaintiff.

4. According to Plaintiff's Original Petition, Plaintiff is organized and existing under the laws of the State of Texas. The Plaintiff's business is located in Victoria County, Texas.

5. At the time of the filing of the Defendants' Notice of Removal, Plaintiff is a citizen of the State of Texas.

6. At the time of the subject incident, at the time of the filing of Plaintiff's Original Petition, and at the time of the Defendant's Notice of Removal, Defendant Atain is an insurance company incorporated under the laws of the State of Michigan and whose principal office is in the State of Michigan.

BASIS FOR REMOVAL

7. Removal is proper because there is complete diversity of citizenship between Plaintiff and Defendant.

8. Plaintiff is a company that at the time of the subject accident, at the time the lawsuit was filed, and at the time of the Defendants' Notice of Removal was located in Victoria County, Texas and is a citizen of the State of Texas.

9. Defendant Atain Specialty Insurance Co. is a company who at the time of the subject accident, at the time the lawsuit was filed and at the time of the Defendant's Notice of Removal was incorporated under the laws of the State of Michigan, whose principal place of business was maintained in the State of Michigan and whose citizenship was in the State of Michigan.

10. As stated in Plaintiff's Original Petition, the amount in controversy exceeds \$75,000.00, exclusive of interests, costs, and attorneys' fees.

VENUE AND JURISDICTION

11. Venue for this removal is proper in this district under 28 U.S.C. § 1441(a) because this district and division embrace the place in which the removed action has been pending.

12. This Court has jurisdiction of this action by virtue of the provisions of 28 U.S.C. § 1332 in that this is a case of diversity of citizenship between the parties with the amount in controversy exceeding \$75,000.00, exclusive of interest and costs.

**DEFENDANT'S NOTICE OF REMOVAL
IS PROCEDURALLY CORRECT**

13. Defendants have attached to this notice all process, pleadings and orders filed in the state court action as required by 28 U.S.C. §1446(a). (*See* Exhibit C, Index of Matters Being Filed)

JURY DEMAND

14. Defendant Atain Specialty Insurance Co made a demand for a jury trial in State District Court.

NOTICE TO STATE COURT

15. Defendant will promptly file a copy of this Notice of Removal with the Clerk of the State Court in which this action is pending.

Respectfully submitted,

CASTAGNA SCOTT L.L.P.
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Austin, Texas 78746
512/329-3290
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By: /s/ Stephen P. Bega
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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been sent by electronic service via Texas Online, certified mail, return receipt requested, or facsimile to:

Via E-file and Facsimile: 361/573-5040

John W. Griffin, Jr.
Michael J. Neuerburg
MAREK, GRIFFIN & KNAUPP
203 N. Liberty Street
Victoria, Texas 77901

in accordance with the Texas Rules of Civil Procedure, on the 5th day of October, 2017.

/s/ Stephen P. Bega
Stephen P. Bega